

Message Text

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ACTION L-03

INFO OCT-01 ARA-16 ISO-00 SSO-00 NSCE-00 SS-20 EUR-25

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FM AMEMBASSY NASSAU

TO SECSTATE WASHDC IMMEDIATE 4995

INFO AMEMBASSY BUENOS AIRES PRIORITY

AMEMBASSY SAN JOSE PRIORITY

C O N F I D E N T I A L NASSAU 1897

E. O. 11652: GDS

TAGS: PFOR CPRS BF

SUBJ: EXTRADITION - ROBERT L. VESCO

REF: NASSAU 1894

BEGIN SUMMARY: MAGISTRATE DISMISSED THE CASE AGAINST VESCO MORNING OF DEC 7. HIS JUDGMENT, WHICH TOOK 1-1/2 HOURS TO READ, WAS BASED ON TWO ELEMENTS: (1) WIRE FRAUD IS NOT AN EXTRADITABLE OFFENSE, AND (2) EVEN IF IT IS, THE US FAILED TO PRODUCE SUFFICIENT EVIDENCE TO PROVE A PRIMA FACIE CASE. A COPY OF HIS DECISION WILL BE POUCHED TO LUCY HUMMER IN L AS SOON AS AVAILABLE. END SUMMARY

1. THE MAGISTRATE STATED THAT IT WAS HIS DUTY TO INTERPRET THE LAW AND NOT TO FILL GAPS IN IT. HE RELIED PRIMARILY ON CANADIAN CASES, THE US-CANADIAN EXTRADITION TREATY, AND THE FACT THAT IN CANADA 18 USC 1343 HAD BEEN RULED NOT EXTRADITABLE. ADDITIONALLY HE POINTED TO (1) FACT THAT US/UK TREATY DATES FROM 1931, WHILE THE WIRE FRAUD STATUTE WAS NOT PASSED UNTIL 1952; (2) THAT THOUGH THE 1972 US/UK PROTOCOL WAS NOT LAW IT WAS OF HELP IN DETERMINING THE EXTRADITABILITY OF WIRE FRAUD; (3) THERE WERE NO UK OR BAHAMIAN PRECEDENTS; AND (4) DOCTRINE THAT IN EXTRADITION DOUBTS ON LAW WERE NOT RESOLVED

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IN FAVOR OF COMMITTAL, EVEN IF DOUBTS ON FACT WERE. THE

ALLOTEY DECISION WAS REJECTED BECAUSE THE LOWER JUDGE IN THAT CASE DID NOT SPECIFY WHETHER EXTRADITION WAS BEING GRANTED ON 18 USC 1341 (MAIL FRAUD) OR 1343, BOTH OF WHICH APPEARED IN THE INDICTMENT AND THE CHIEF JUSTICE DECISION DEALT SOLELY WITH 1341. OSADEBAY THEN RULED THAT OFFENSE STATED IN 1343 WAS NOT EXTRADITABLE.

2. THE SECOND GROUND FOR DISMISSAL WAS FAILURE OF THE US TO PRESENT SUFFICIENT EVIDENCE TO SHOW A PRIMA FACIE CASE. THE FIRST GAP IN THE EVIDENCE WAS THE ABSENCE OF A LINK SHOWING THAT VESCO HAD ASKED CLAY TO HAVE THE \$50,000 SENT TO BUHL'S SWISS BANK. OSADEBAY REFUSED TO PRESUME THIS FROM THE FACTS. THE EVIDENCE DID NOT SPECIFICALLY SHOW THAT VESCO ORDERED THE MONEY TO BE SENT ESPECIALLY SINCE VESCO WAS IN EAST AFRICA ON THE DAY THE WIRE WAS SENT. OSADEBAY THEN RULED THAT PETER LAU'S (OF THE BANK OF AMERICA) AFFIDAVIT DID NOT PROVE THAT THE CABLE ACTUALLY PASSED THROUGH THE SOUTHERN DISTRICT OF NEW YORK. THE US, HE SAID, WAS REQUIRED BY THE QUANTUM OF EVIDENCE TO PRESENT POSITIVE PROOF OF THIS. THE ABSENCE OF ARTICLES OF ASSOCIATION OF ICC AND THE MINUTES OF THE ICC BOARD OF DIRECTORS MEETINGS AT WHICH VESCO MADE HIS VARIOUS STATEMENTS TO RICHARDSON WEIGHED HEAVILY IN THE JUDGE'S DECISION. RICHARDSON'S AFFIDAVITS WERE RULED INSUFFICIENT TO RELY ON. THE TWO BUHL AFFIDAVITS, HE SAID, WERE CONTRADICTORY BUT DID NOT COMMENT FURTHER. THE ARTICLES OF ASSOCIATION WERE REQUIRED TO SHOW WHETHER CLAY WAS AN OFFICER AUTHORIZED TO HAVE THE MONEY SENT. (COMMENT: THAT APPEARS TOTALLY IRRELEVANT TO THE FRAUD ALLEGED IN THIS CASE.)

3. THE MAGISTRATE HELD THAT VESCO COULD NOT BE HELD FOR AIDING AND ABETTING THE OFFENSE SINCE CLAY OR OST WERE NOT INDICTED AS THE PRINCIPALS WHOM HE IS CHARGED WITH AIDING. ON THE QUESTION OF FALSE PRETENSES, MAGISTRATE SAID THAT AS MATTER OF LAW A FALSE PRETENSE MADE AFTER THE FACT OF TRANSFER OF FUNDS DID NOT QUALIFY. HE RULED THAT THIS WAS NOT A CONTINUING OFFENSE. HE ALSO HELD THAT THERE WAS NO EVIDENCE THAT CLAY WAS NOT CORRECT IN SENDING THE \$50,000 TO BUHL.

4. ONLY POINTS IN USG FAVOR WERE THOSE WHICH SEEMED OBVIOUS. MAGISTRATE RULED THAT THE WARRANT AND INDICTMENT WERE NOT CONFIDENTIAL

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VOID FOR VAGUENESS AND THAT THE US-UK EXTRADITION TREATY, AS WELL AS THE UK EXTRADITION ACT, DID BECOME PART OF BAHAMIAN LAW ON JULY 10, 1973.
SPIERS

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